

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

LANNETT COMPANY, INC.

Employer

and

Case 4–RC–20730

TEAMSTERS UNION LOCAL NO. 115 a/w
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO¹

Petitioner

**DECISION AND
DIRECTION OF ELECTION**

The Employer develops and manufactures generic pharmaceutical products at three facilities in Philadelphia, Pennsylvania. The Petitioner seeks to represent a unit consisting of the production and maintenance employees at these facilities. The parties agree on the inclusion of approximately 66 employees in most of the unit's job classifications.² Because the parties disagree as to several other classifications, a hearing was held concerning these issues, and the parties filed briefs.³

The first of the disputed issues involves three Line Leaders in the Packaging Department. The Petitioner contends the Line Leaders are statutory supervisors. As explained in greater

¹ The Petitioner's name was amended at the hearing.

² The parties agreed that the following employee categories are included in the unit. The approximate number of employees in the classification is in parentheses: Buyer (1), Janitors (3), Laboratory Assistant (1), Laboratory Technicians (3), Lead Handler (1), Maintenance employees (2), Maintenance Mechanics (2), Manufacturing Custodian (1), Manufacturing Group Leader (1), Manufacturing Technicians (16), Manufacturing Technicians II (4), Manufacturing Technicians III (1), Materials Handlers (4), Packers (9), Packers I (1), Packers/Operators III (2), Product Development Technicians I (2), Product Development Technicians II (1), Manufacturing Assistant (1), Purchasing Agent (1), Purchasing Agent Inventory Analyst (1), Scheduler (1), Shipping and Receiving Clerks (5), Validation Specialist (1), and Validation Technician (1).

The parties stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act: Director of Analytical Services Agnes Maderich, Senior Supervisor Mayietta Morris-Moore, Maintenance Supervisor John Morales, Manufacturing Manager Michael Richtmyer, Manufacturing Supervisor Thomas Stein, Assistant Supervisor Michael Krekevich, Shift Supervisor Matthew Abraham, Materials Manager William Schreck, Packaging Supervisor Caroline Sandlin, Research and Development Senior Supervisor Lillian Vergara, Shipping and Receiving Warehouse Supervisor Thomas Peters, Quality Assurance Supervisor Alan Phillips, and Quality Assurance Manager Allison Burgess.

³ The Employer also filed a Motion to Correct The Transcript. The Motion is unopposed and is hereby granted.

detail below, I find that the Petitioner has not established the supervisory status of the Line Leaders, and I shall include them in the unit.

A second disputed point involves seven Quality Assurance Inspectors. The Employer seeks to exclude these individuals, contending that they are managers and that they lack a community of interest with other unit employees. As explained below, the Employer has not demonstrated the managerial status of the Quality Assurance Inspectors, and I find that they share a sufficient community of interest with other employees to be included in the unit.

A final issue centers on the status of 15 Chemists working in the Employer's Quality Control (QC) Department. The Employer would exclude them as professional employees lacking a community of interest with unit employees. If the QC Chemists are included, the Employer takes the position that the unit should also include three QC Group Leaders, two Research and Development (R & D) Group Leaders, 15 R & D Chemists, an R & D Senior Scientist, and a Senior Formulator in the Product Development Department. The Petitioner contends that the Group Leaders in both the R & D and QC departments are supervisors within the meaning of the Act and that the remaining R & D employees and the Senior Formulator lack a sufficient community of interest with other employees to be included in the unit. I find that the Petitioner has not established the supervisory status of the Group Leaders in either department, and I shall include them. However, I find that the QC Chemists are non-professional employees who share a sufficient community of interest to be included in the unit. I further find that the R & D Chemists, the Senior Scientist, and the Senior Formulator are professional employees who do not share a sufficient community of interest with other employees to mandate their inclusion in the unit.

To provide a context for the discussion of the issues, I shall begin the Decision with a brief overview of the Employer's operations followed by a review of the factors that must be evaluated in determining supervisory, managerial, and professional status, and community of interest. I then shall discuss each of the disputed issues in turn, starting with the Line Leaders, followed by the Quality Assurance Inspectors, and concluding with the various issues related to the QC and R & D Departments.

I. OVERVIEW OF OPERATIONS

The Employer's facilities are located at 500-A State Road (the State I facility), 9000 State Road (the State II facility), and 90001 Torresdale Avenue (the Torresdale facility) in Philadelphia. The State I facility is about two miles from the State II facility, which is about one mile from the Torresdale facility.

The State I facility currently houses the Shipping and Receiving Department on the first floor and the R & D Department on the second floor. The State II facility houses the Employer's administrative offices and Product Development and QC laboratories, which are separated by a center hallway from the Manufacturing, Packaging, and Quality Assurance areas. All employees who work in this facility use a lunch trailer at the rear of the building. No unit employees currently work at the new Torresdale facility.

The Employer's lease at the State I facility will expire in April 2004. The Employer's witnesses testified that the Employer does not plan to renew the lease and that, after the State I facility is abandoned, both the R & D and QC Departments will be moved to the Torredale facility where personnel will share laboratory equipment and supervision. The Employer also intends to move the Packaging Department to the Torredale facility.

The R & D Department tests drugs the Employer may manufacture. R & D Senior Supervisor Lilian Vergara manages this Department and reports to Director of Analytical Services Agnes Maderich who reports in turn to Vice President of Operations Bernard Sandiford. The R & D Department includes 15 Chemists, a Laboratory Assistant, and a Senior Scientist. The Chemists report to two Group Leaders, who report to Vergara. The Senior Scientist reports directly to Maderich.

The QC Department tests the raw materials used in production and the chemical composition of the finished product. The QC Department includes 15 Chemists, a Laboratory Assistant, and three Laboratory Technicians. The Quality Control Chemists, Laboratory Assistant, and Laboratory Technicians report to three Group Leaders, and the Group Leaders report to QC Supervisor Mayietta Morris-Moore. Morris-Moore reports to Director of Analytical Services Maderich.

The Product Development Department includes three Product Development Technicians, whom the parties agree should be included in the unit. The Product Development Department also includes a Senior Formulator who works in a laboratory alongside the Product Development Technicians. The principal function of these Formulators is to determine the composition of drugs the Employer is considering for manufacture.

The Quality Assurance Department is responsible for ensuring that production follows proper procedures and for testing the physical properties of the Employer's products to make certain they meet appropriate standards. Quality Assurance Department employees work in the Manufacturing and Packaging areas of the Employer's facility and in an adjacent Quality Assurance room. The Quality Assurance Department consists of Quality Assurance Manager Allison Burgess, Quality Assurance Supervisor Allen Phillips, and seven Quality Assurance Inspectors. Burgess reports directly to the Employer's President, Arthur Bedrosian.

Three Line Leaders work in the Employer's Packaging Department monitoring the work of 10 Packers and two Packer/Operators. The department also has four Materials Handlers. The Line Leaders report to Packaging Supervisor Caroline Sandlin.

The Manufacturing Department has a Group Leader, Lead Handler, Manufacturing Custodian, Scheduler, Production Assistant, and several categories of Manufacturing Technicians. The Maintenance Department employs three Janitors, two Maintenance employees, and two Maintenance Mechanics. The Shipping and Receiving Department has five Shipping and Receiving Clerks.

II. FACTORS RELEVANT TO DETERMINING THE VARIOUS ISSUES INVOLVED IN THIS CASE

Supervisory Status

Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712 (2001); *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994). The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.* supra. Any lack of evidence in the record is construed against the party asserting supervisory status. *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536, fn. 8 (1999).

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. *Juniper Industries*, supra, at 110. The authority effectively to recommend an action means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation ultimately is followed. *Children's Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Co.*, 186 NLRB 1 (1970). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), enf'd. 961 F.2d 1578 (6th Cir. 1992). Evidence of the exercise of secondary indicia of supervisory authority is not sufficient to establish supervisory status in the absence of primary indicia of supervisory authority. *First Western Building Services*, 309 NLRB 591, 603 (1992).

Managerial Status

Managerial employees are excluded from the coverage of the Act and are not entitled to be accorded bargaining rights. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 289 (1974). Managerial employees are those who formulate and effectuate management policies by expressing and making operative the decisions of their employer and who have discretion in the performance of their jobs independent of the employer's established policies. *NLRB v. Yeshiva University*, 444 U.S. 672, 682-683 (1980); *Bechtel Incorporated*, 225 NLRB 197, 198 (1976). The determination of an employee's managerial status depends on the extent of his or her discretion, and an employee who exercises limited discretion, bordering on routine performance, will not be deemed managerial. *Eastern Camera & Photo Corp.*, 140 NLRB 569, 571 (1963).

The party asserting managerial status has the burden of proof on this issue. *E.C. Waste, Inc.*, 339 NLRB No. 39, slip. op. p. 19 (2003).

Professional Status

Section 9(b)(1) of the Act precludes the Board from finding appropriate a unit that includes professional employees with nonprofessional employees unless a majority of the professional employees vote to be so included. The definition of a professional employee is set forth in Section 2(12) of the Act as follows:

The term “professional employee” means – (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of a specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (b) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 2(12) is meant to apply to small and narrow classes of employees. *The Express-News Corp.*, 223 NLRB 627, 630 (1976). Accordingly, employees must satisfy each of the four requirements set forth in Section 2(12) before they qualify as professional employees within the definition. *Greenhorne & O’Mara, Inc.*, 326 NLRB 514, 517 (1998); *Arizona Public Service Co.*, 310 NLRB 477, 481 (1993). Although employee background is examined for the purpose of deciding whether the work of the group satisfies the “knowledge of an advanced type” requirement of Section 2(12)(a), it is the character of the work required rather than the individuals’ qualifications that determine professional status. *The Express News Corp.*, supra at 628; *Western Electric Co., Inc.*, 126 NLRB 1346, 1348-1349 (1960). An employer’s requirement that all of its employees in a classification have an advanced degree in the field to which the profession is devoted would be persuasive evidence that the employees are professionals, but such evidence is not necessarily conclusive. Professional employee status turns on the degree of judgment required of the employees in applying the knowledge acquired through a prolonged course of study in specialized schooling. *Aeronca, Inc.*, 221 NLRB 326, 327 (1975). Salary is not determinative of professional status. *E. W. Scripps Co.*, 94 NLRB 227, 240 (1951).

The Board has found laboratory employees to be professionals when they determine which tests to perform, improvise test methods, or perform complicated or detailed analyses. Employees who perform routine tests following set procedures normally are viewed as non-professional technical employees – i.e., employees who do not meet the definition of professional but who perform work of a technical nature involving the use of independent judgment and requiring the exercise of specialized training typically acquired in technical schools or through special courses. *Barnert Memorial Hospital*, 217 NLRB 775, 782-783 (1975); *Ohio Ferro-Alloys Corp.*, 107 NLRB 504 (1953); *Swift & Company*, 98 NLRB 746 (1952); *Union Oil Company of California*, 88 NLRB 937 (1950); *Colorado Milling and Elevator Co.*, 87 NLRB 1091 (1949).

Community of Interest

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. *Bartlett Collins Co.*, 334 NLRB 484 (2001). See *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that differs from the proposed alternative units. See, e.g., *Bartlett Collins Co.*, *supra*; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, employee contact and interchange, fringe benefits, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

The Board normally will include quality assurance or quality control employees in a unit with production employees when they work in the same areas, have regular contact, and perform tasks functionally integrated with the production process. *Keller Crescent Co.*, 326 NLRB 1158, 1159 (1998); *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Libby Glass Division*, 211 NLRB 939, 940 (1974); *Ambrosia Chocolate*, 202 NLRB 788, 789 (1973). In *Blue Grass Industries, Inc.*, 287 NLRB 274, 299 (1987), the Board included quality control employees in a unit with production employees because their role was a vital part of the production process. In *The Lundy Packing Company, Inc.*, 314 NLRB 1042, 1043 (1994), the Board noted that quality control employees are generally included in production and maintenance units when a union has requested them, finding that their placement in the same unit does not create a conflict of interest.⁴ On the other hand, the Board has excluded quality assurance employees when they

⁴ In that case, the Board did not include the quality control employees in the unit, because the petitioner sought their exclusion and because they had separate supervision, were paid differently, had little contact and interchange with

worked in separate areas during different hours than production employees and consulted with supervisors rather than production employees to solve problems. See *Weldun International, Inc.*, 321 NLRB 733, 751-752 (1996), *enfd.* in pertinent part, 165 F. 3^d 18 (6th Cir. 1998); *Penn Color, Inc.*, 249 NLRB 1117, 1120 (1980).

III. THE PACKAGING DEPARTMENT LINE LEADERS

The Employer would include the three Packaging Department Line Leaders in the unit, while the Petitioner contends that they should be excluded as supervisors.

Facts

According to Human Resources Director Katherine Weaver, the sole witness concerning this issue, the Line Leaders ensure that the Packaging Department runs smoothly. They spend their time “walking the [packaging] line,” making certain that employees are performing their assigned functions and that there are no equipment malfunctions. They also complete paperwork at their desks in the packaging area. Line Leaders normally do not perform the work of other Packaging Department employees.

Line Leaders report to Packaging Department Supervisor Caroline Sandlin, who completes evaluations for this Department’s employees after obtaining input from the Line Leaders. These evaluations determine the amount of employee wage increases. Sandlin has the Line Leaders fill out written evaluation forms for all of the employees and considers these forms when preparing her evaluations. She maintains her own records regarding employee performance and relies on those records, as well as the input from the Line Leaders, in deciding how employees should be rated.

The Line Leaders are paid from \$16.36 to \$17.78 per hour, while the hourly rates paid to other employees in the Packaging Department range from \$9.20 to \$13.36. The Line Leaders have no authority to hire, fire, or discipline other employees, and there is no evidence that they participate in the disciplinary process.

Analysis and Conclusion

The only arguable indicia of supervisory status for the Line Leaders are the authority to responsibly direct and to reward employees. Line Leaders make certain that other employees are properly performing their jobs, but the Board has generally found that “showing other employees the correct way to perform a task does not confer supervisory status.” *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001), *enfd.* in pertinent part, 317 F. 3d 316 (D.C. Cir. 2003). Further, the record contains no indication that duties performed by Packaging Department employees are sufficiently complex to require the Line Leaders to exercise significant judgment or discretion in

the production and maintenance employees, and had generally different functions. The Board’s determination to exclude the quality control employees, however, was reversed on appeal, 68 F. 3d 1577 (4th Cir. 1995), supplemented by 81 F. 3d 25 (4th Cir. 1996).

monitoring their work. I therefore find that the Petitioner has not demonstrated that the Line Leaders responsibly direct other employees.

I also find the evidence insufficient to show that the Line Leaders reward other employees. While they provide information used in employee evaluations, and these evaluations are used in determining the amount of wage increases, Packaging Supervisor Sandlin prepares the evaluations. She maintains her own records regarding employee performance and uses those records, in addition to the Line Leaders' input, in deciding how employees should be evaluated. Thus, the information provided by the Line Leaders does not by itself effectively affect the wages and/or job status of the employee being evaluated. Absent such a direct connection, the role played by the Line Leaders in the evaluation process is not enough to transform them into statutory supervisors. *Williamette Industries, Inc.*, supra; *Elmhurst Extended Care Facilities, Inc.*, supra, 329 NLRB at 536-538 (1999). Cf. *Beverly Enterprises-Massachusetts, Inc.*, 329 NLRB 233 (1999).

The Line Leaders possess some secondary indicia of supervisory status. They earn higher wages than other Packaging Department employees, and they do not perform hands-on work. Absent evidence that the Line Leaders exercise any one of the powers listed in Section 2(11), however, these secondary indicia are not sufficient to establish supervisory status. *First Western Building Services*, 309 NLRB 591, 603 (1992). I therefore find that the Petitioner has not shown the Line Leaders to be supervisors, and I shall include them in the bargaining unit.

IV. THE QUALITY ASSURANCE INSPECTORS

The Employer asserts that the Quality Assurance Inspectors should be excluded from the unit because they are managers or because they do not share a community of interest with unit employees.

Facts

The Quality Assurance Department, which is located at the State II facility, consists of Quality Assurance Manager Allison Burgess, Quality Assurance Supervisor Allen Phillips, and seven Quality Assurance Inspectors. Burgess' office is in the administrative office area. Phillips has a desk in a Quality Assurance room where he spends most of his time performing paperwork although he sometimes walks through the production and packaging areas to observe the work of the Quality Assurance Inspectors. The Quality Assurance Inspectors split time between the Quality Assurance room and the manufacturing and packaging areas.

Standard Operating Procedures developed principally by Burgess govern the manner in which manufacturing and packaging employees perform their jobs. The Quality Assurance Inspectors monitor the work of manufacturing and packaging employees to make certain these procedures are being followed. If a Quality Assurance Inspector observes a failure to follow proper procedures, he or she will ask the involved employee to alter his or her behavior. Such infractions might be as simple as a failure to wear a hairnet, in which case the matter will most

likely not be reported, or a more serious deviation, which are reported to Phillips and may result in disciplinary action following a supervisory investigation.

Quality Assurance Inspectors also perform simple tests to determine whether the product conforms to specifications. These tests primarily ensure that the pills and capsules are the correct weight, size, and density. QC Chemists perform tests to determine whether the product's chemical composition is correct.⁵ Standard Operating Procedures determine what tests the Quality Assurance Inspectors perform, how often they perform them, and when the result requires that machinery should be shut down, as described below.

When a Quality Assurance Inspector determines that a product does not conform to specifications, he or she asks manufacturing employees to adjust the machinery to attempt to correct the problem. If a serious problem persists, the Quality Assurance Inspector will instruct the manufacturing employees to shut down the malfunctioning machines and will report the matter to Phillips and Burgess. The Employer's witnesses gave conflicting testimony concerning the frequency with which shutdowns have been ordered. Specifically, President Bedrosian and Vice President of Operations Sandiford indicated that shutdowns occur only about six to nine times per year, but Human Resources Director Weaver testified that Quality Assurance Inspectors shut down production an average of three times per week. Shutdowns may last more than 24 hours and can result in the temporary layoff of production employees.⁶

Quality Assurance Inspectors have some responsibility for cleaning production and packaging equipment. They also obtain samples of raw materials, work in progress, and finished product for analysis by the Employer's QC and R & D Departments.

Burgess may show Standard Operating Procedures to Quality Assurance Inspectors to obtain their input. On occasion he has asked one of them to draft a procedure. The record does not indicate what, if any, impact the Quality Inspector's comments might have on the content of the Standard Operating Procedures nor does the record contain any description of the procedures the Quality Assurance Inspectors have been asked to prepare.

The Quality Assurance Inspectors wear white lab coats while at work, whereas manufacturing and packaging employees wear different uniforms. The Quality Assurance Inspectors are paid between \$11 and \$17.40 per hour. Manufacturing and Packaging employees make between \$9.50 and \$15 per hour. Only a high school degree is required to qualify for a position as a Quality Assurance Inspector.

Analysis and Conclusion

The Quality Assurance Inspectors exercise some discretion but it is governed by Employer policy. Thus, Standard Operating Procedures determine when and where Quality Assurance Inspectors will conduct tests, when the results require further action, and how and

⁵ Many of the tests done by the Quality Assurance Inspectors are duplicated by manufacturing and packaging employees.

⁶ Weaver testified that on at least one occasion, production employees were sent home without pay as the result of a shutdown.

when Quality Assurance Inspectors clean machinery or take samples. Moreover, the Quality Assurance Inspectors monitor the work performed by manufacturing employees to ensure that it complies with Standard Operating Procedures.

There is insufficient evidence that the Quality Assurance Inspectors are involved in formulating the policies they apply. Although they may be asked to comment on Standard Operating Procedures, there is no evidence as to the impact of any such comments. Similarly, although occasionally they may also be asked to draft a policy, the record does not show the extent of their involvement. Thus, it is not clear whether the Quality Assurance Inspectors produce new policies or whether they simply codify existing practices or copy existing policies and make minor modifications. The record also does not indicate whether the policies they draft involve significant matters or minor issues of procedure.

The Quality Assurance Inspectors follow existing policy in performing their jobs, and they do not possess the ability to exercise the discretion independent of existing policy, which is the hallmark of managerial status. I therefore find that the Employer has failed to meet its burden of showing that the Quality Assurance Inspectors meet the criteria necessary for a finding of managerial status. See *Case Corporation*, 304 NLRB 939 (1991), *enfd.* 995 F.2d 700 (7th Cir. 1993); *Bil-Mar Foods, Inc.*, 286 NLRB 786, 792-93 (1987); *Alco-Gravure, Inc.*, 249 NLRB 1019, 1020-1021 (1980).⁷

As an alternative to its claim that the Quality Assurance Inspectors are managerial employees, the Employer contends that they should be excluded from the unit because they monitor the work of production employees and have a conflict of interest with them. The Board has considered and rejected a similar argument in *Bechtel Incorporated*, *supra*. The disputed employees in *Bechtel* inspected work on the Trans-Alaska Pipeline to make certain it conformed to specifications. The Board noted that the employer exercised significant control over the pipeline inspectors through a combination of specifications which dictated when work would be deemed inadequate and spot checks by supervisors. Given this control, the Board concluded that the employer had the ability to resolve any questions concerning proper performance by the inspectors and that there was no conflict of interest sufficient to deny the inspectors representation. The same reasoning applies here. Employer policy determines how the Quality Assurance Inspectors monitor production work, and Phillips oversees their work and is in a position to determine whether they are properly performing their jobs. Thus, in these circumstances, the existence of a significant conflict of interest has not been shown.

The Quality Assurance Inspectors work in the same areas as manufacturing and packaging employees, have regular contact with them in the course of performing their duties, and perform functions integrated with the manufacturing and packaging process. Thus, they

⁷ The cases cited in the Employer's brief to support its claim of managerial status are easily distinguishable. The individual whose status was disputed in *Bentley Hedges Travel Service, Inc.*, 263 NLRB 1408, 1412 (1982), served as a corporate officer and Vice President. The employee in dispute in *Concepts & Designs, Inc.*, 318 NLRB 948, 956-957 (1995), *enfd.* 101 F. 3^d 1243 (8th Cir. 1996), was found managerial due to her ability to pledge the employer's credit. The Quality Assurance Inspectors in this case do not pledge the Employer's credit and are not corporate officers. As a consequence, the cases cited by the Employer do not support a finding of managerial status.

have a community of interest with other employees, and I shall include them in the bargaining unit.⁸

V. THE QUALITY CONTROL AND RESEARCH AND DEVELOPMENT DEPARTMENTS

A. The Quality Control Chemists

The QC Department includes Senior Supervisor Mayietta Morris-Moore, three Group Leaders, 15 Chemists, three Laboratory Technicians, and a Laboratory Assistant. The parties agree that the Laboratory Technicians and Laboratory Assistant should be included in the bargaining unit and that Morris-Moore should be excluded. The Petitioner seeks to include the QC Chemists, but the Employer opposes their inclusion on the ground that they are professional employees who do not share a community of interest with other unit employees.

Facts

There are three classifications of QC Chemists – Chemist I, Chemist II, and Senior Chemist. Human Resources Director Weaver testified that all of the QC Chemists perform the same tests and that length of service is the primary factor determining their classifications.

The bulk of the QC Chemists' work consists of performing "assays" to make certain that raw materials and finished product have the correct chemical composition. The R & D Department decides which tests will be performed, obtains the methodology for the tests from government or trade association manuals, and makes any modifications in the methodologies required for the Employer's products and procedures. The QC Chemists are not permitted to deviate from the procedures dictated by R & D and can be disciplined if they fail to follow the established procedures precisely. The QC Chemists are told what results are expected, determine whether the tests yield the anticipated readings, and report any deviations to the QC Group Leaders. The Group Leaders decide what action to take as a result of test failures.

The QC Chemists also perform dissolution tests designed to determine the rate at which the elements in particular drugs dissolve. These tests are ordered by the Senior Formulator in the Product Development Department and are also performed by R & D Chemists.

⁸ The Employer's brief attempts to distinguish *Bechtel* by arguing that the supervisors monitoring the work of the pipeline inspectors in that case were physically present while the inspectors performed their functions, in contrast to the Quality Assurance Supervisor in this case, who visits the areas in which the Quality Assurance Inspectors work on a periodic basis. I find this attempted distinction unpersuasive. In *Bechtel*, the Board indicated that supervisors spot-checked the work of inspectors, plainly suggesting that they were normally not present while the inspectors worked. Indeed, 185 inspectors reported to five quality control supervisors and one NDE Qualifier and each of the quality control supervisors was responsible for 150-225 miles of pipeline. Since the work performed by the inspectors in *Bechtel* occurred over the length of the pipeline, it is unlikely that a supervisor could have been present at all times. Thus, the extent of supervision in *Bechtel* was no greater than that present in this case and was probably less extensive.

Two of the Laboratory Technicians employed in QC perform the same tests as the QC Chemists. The third Laboratory Technician orders materials. The Laboratory Assistant cleans glassware used to perform the tests.

The Employer currently requires newly-hired QC Chemists to have a Bachelor of Science degree in Chemistry or a related field. The Employer did not impose this requirement until April 2002, and three of the current QC Chemists do not have Bachelor of Science degrees.⁹ Two QC Chemists testified at the hearing that they believed their jobs could be performed by any high school graduate who had taken a course in chemistry and that the testing they performed was routine and repetitive and did not require the exercise of independent judgment.

The Employer's manufacturing and packaging employees work from 7:00 a.m. to 3:30 p.m. or from 3:00 p.m. to 11:30 p.m. and have limited flexibility in their work hours. In contrast, the QC Chemists all work an eight-hour day which can start anywhere from 6 a.m. to 10 a.m. at the employee's option. The QC Chemists wear white lab coats, different from the uniforms worn by the manufacturing and packaging employees although they are the same as the lab coats worn by the Quality Assurance Inspectors.

Manufacturing and packaging employees have no reason to visit the QC laboratories, and there is no meaningful work-related contact between these employees and the QC Chemists. Quality Assurance Technicians visit the QC laboratories on a regular basis to drop off samples and pick up alcohol used to clean machinery.

The QC Chemists are salaried and are paid between \$36,000 and \$53,000 per year. They are "exempt" employees and are entitled to be paid overtime only in limited situations. Manufacturing and packaging employees are paid from \$9.50 to \$17.78 per hour. The manufacturing and packaging employees are "non-exempt" and are paid extra for overtime work.¹⁰

All employees receive the same package of benefits, although benefits for QC Chemists and other exempt employees are effective on their first day of employment, whereas benefits for non-exempt employees do not become effective until they have completed a 90-day probation period. The number of vacation days received by exempt and non-exempt employees vary to some extent. All employees are required to punch in and out, and all of the employees at the State II facility use the same timeclock. Those at the State II facility also eat in the same lunch trailer.

Analysis and Conclusion

The tests performed by the QC Chemists are routine and repetitive. The R & D Department determines the type of tests to be performed, the methodology for performing the tests, and the results to be obtained, and the QC Chemists follow the methodology set by the R & D Chemists, checking for any deviation from the specified results. These duties do not require the consistent exercise of discretion and judgment. Although the Employer presently requires its

⁹ Previously, the Employer required a Bachelor's degree or an Associate's degree plus experience.

¹⁰ The record does not indicate what rates are applied to the QC Laboratory Technicians and Laboratory Assistant.

QC Chemists to have attained a Bachelor of Science degree, at least some of the employees in the classification do not meet this requirement. Further, Laboratory Technicians outside the classification perform tests identical to those performed by the QC Chemists, evidence that suggests that an advanced degree is not a prerequisite to the performance of the QC Chemists' functions. I therefore find the QC Chemists are non-professional technical employees. *Barnert Memorial Hospital*, supra, 217 NLRB at 783 (Technicians).

The Board will include technical employees in a unit with non-technical provided the two groups share a community of interest. *Century Electric Company*, 146 NLRB 232, 235 (1964); *Sheffield Corporation*, 134 NLRB 1101, 1103-1104 (1961). Where some technical employees are included, the unit should encompass all technical employees who share a community of interest with the included technicals and who carry out functionally-related duties. *PECO Energy Company*, 322 NLRB 1074, 1084-1085 (1997).

Although unit manufacturing and packaging employees rarely visit the QC laboratories, the QC Chemists perform raw material and finished product testing that is functionally related to the production process. The Quality Assurance Technicians, who are included in the unit, often visit the QC laboratories and provide samples used by the QC Chemists, another indication of the QC Chemists' integration into the production process. More significant is the presence in the QC laboratories of three Laboratory Technicians and a Laboratory Assistant who are included in the unit. They work alongside the QC Chemists, wear the same uniforms, and share the same supervisors. Although their job generally requires greater skill, the QC Chemists share a community of interest with the Laboratory Technicians and Laboratory Assistant. I shall therefore include the QC Chemists in the unit. See *Celotex Corp.*, 180 NLRB 62 (1969); *Martin Company, a Division of the Martin-Marietta Corp.*, 162 NLRB 319 (1966).

B. The Research and Development Chemists and Senior Scientist

The Employer takes the position that, should the QC Chemists be included, the R & D Chemists and Senior Scientist also must also be included in the unit. In this regard, the Employer asserts that employees in these classifications are professionals who share a community of interest with the QC Chemists. The Petitioner would exclude these classifications. The parties agree that the R & D Laboratory Assistant should be included in the unit.

Facts

Like the QC Chemists, the R & D Chemists are divided into three classifications – Chemist I, Chemist II, and Senior Chemist. Employees in all three classifications perform the same functions.

When the Employer attempts to develop a new pharmaceutical product, the Product Development Department determines the composition of the product. As part of this process, “dissolution tests” must be performed, 90 percent of which are completed by the R & D Department. QC Chemists perform the remaining dissolution tests. As noted above, the R & D Department tells QC employees what methodology to use and what results to expect, and Quality Control Chemists inform the R & D Department of the results.

Once the Product Development Department has decided that production of a drug seems feasible, the R & D Department determines what additional tests are needed. R & D Chemists search scientific literature and government manuals to ascertain what tests are appropriate and adapt test methodology to fit the Employer's needs. They then perform the tests to verify that the desired results have been achieved.

Following completion of this process, the R & D employees visit the QC laboratory and make certain that the results obtained on the R & D equipment are consistent with those secured on the QC equipment. This function is sometimes performed by QC Chemists in accordance with instructions from R & D. The test methodology is then turned over to the QC Department for use in performing tests during the course of the manufacturing process. A former R & D Chemist testified that his work was varied and involved the exercise of independent judgment.

A number of Chemists have permanently transferred between QC and R & D. Thus, in the last three years, about five to seven Chemists have transferred from QC to R & D, and about five or six Chemists have transferred from R & D to QC. Some Chemists have worked in both laboratories at the same time.

There have also been a small number of temporary transfers. Human Resources Director Weaver testified that two R & D Chemists were temporarily transferred to QC to cover for employees on vacation and that one R & D Chemist filled in for an employee on leave of absence. Most of the equipment in the QC and R & D laboratories is the same, although some instruments are present in only one of the laboratories, and Chemists from one laboratory sometimes will visit the other to use such equipment. Chemists in both laboratories speak to each other frequently to resolve problems in the tests developed by R & D for Quality Control.

The Senior Scientist is assigned to work in the R & D laboratory but reports directly to Analytical Services Director Maderich. He prepares Standard Operating Procedures used by other laboratory employees and handles special projects, which might involve tests on drugs being considered by Product Development or research and testing designed to uncover and remedy flaws in the production process.

Like their counterparts in QC, the R & D Chemists and Senior Scientist are exempt employees who generally are ineligible for overtime pay. The Chemists in both QC and R & D receive the same fringe benefits and work the same hours. R & D Chemists receive between \$40,000 and \$66,000 per year, and the Senior Scientist's salary is \$78,000 per year. Chemists in R & D are required to have a Bachelor of Science degree in Chemistry or a related subject. Unlike the QC Chemists, all of the current R & D Chemists meet this requirement.

Analysis and Conclusion

I find that the R & D Chemists and Senior Scientist are professional employees within the meaning of the Act. Unlike the Quality Control Chemists, the R & D Chemists do not merely perform routine tests. They search scientific literature to determine what tests may appropriately be used to monitor the quality of the Employer's product, and they modify the tests to suit the

Employer's needs and verify that the tests work properly. These functions necessarily require both knowledge of chemistry obtained either from university training or from prolonged experience in a laboratory environment as well as the exercise of discretion in selecting and modifying the tests for the Employer's use. Since the R & D Chemists normally deal with previously untested products and they determine what tests to perform, their work is varied and intellectual in character. Similarly, the Senior Scientist exercises discretion in developing procedures and resolving technical problems with production. Since he is assigned special projects and reviews scientific literature, his work is not routine, and it is intellectual in character. Accordingly, I find that both the R & D Chemists and the Senior Scientist meet the definition of professional employees. *Barnert Memorial Hospital*, supra; *Swift & Company*, supra; *Union Oil of California*, supra.

The Act treats professional employees as a distinct group and permits their inclusion in a unit of non-professionals only when they consent, pursuant to a self-determination election. *Leedom v. Kyne*, 358 U.S. 184 (1958); *Sonotone Corp.*, 90 NLRB 1236 (1950). Therefore, a unit of non-professionals can be appropriate even if related professionals are excluded, and in this case I find that the unit is appropriate without the R & D Chemists and Senior Scientist. *Loral Electronics Systems*, 200 NLRB 1019, 1020 (1972). In this regard, the R & D Chemists and Senior Scientists are separately supervised, work in separate areas of the facility, generally perform different tests, and receive higher salaries than their Quality Control counterparts. There are other community-of-interest factors that would favor the R & D Chemists' inclusion in the same unit as Quality Control Chemists, such as relatively frequent permanent transfers, use of the same types of equipment, functional integration, and frequent contact. However, although the unit might be more appropriate if these classifications were included, the Petitioner need only seek an appropriate unit, not the most appropriate one. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Accordingly, I shall exclude the R & D Chemists and Senior Scientist.

C. THE SENIOR FORMULATOR IN THE PRODUCT DEVELOPMENT DEPARTMENT

The Employer contends that the Senior Formulator is a professional employee and must be included in the unit because he shares a community of interest with the QC Chemists that it also contends are professional.¹¹

Facts

The Senior Formulator is responsible for determining the components of the Employer's new products. He uses the results of tests performed by the R & D Chemists to determine what ingredients to include and derive the formula for the product. The Senior Formulator also has a laboratory in which he personally performs some tests. The Employer requires that the Senior Formulator have at least a Bachelor of Science degree in Chemistry or a related field and experience in the drug industry.

¹¹ As discussed above, the contention that the Quality Control Chemists are professionals has been rejected.

The Product Development Department also employs three Product Development Technicians whom the parties have agreed to include in the unit.

Analysis and Conclusion

The Senior Formulator meets the criteria for professional status. He is required to have a specialized college degree in addition to experience in the industry. Moreover, his job is varied and intellectual in character, as he attempts to create formulas for new products, and he must exercise discretion in deciding what components are to be included in the drugs. As the Petitioner does not wish to include the Senior Formulator in the unit, I shall exclude him for the same reasons expressed above in connection with the R & D Chemists and Senior Scientist.

D. THE QUALITY CONTROL GROUP LEADERS

The Petitioner contends that the three Quality Control Group Leaders should be excluded as supervisors within the meaning of the Act.¹² The Employer contends that they are not supervisors and, if QC Chemists are included in the unit, Quality Control Group Leaders should also be included since they share a community of interest with the QC Chemists, Laboratory Technicians, and Laboratory Assistant.

Facts

The QC Group Leaders distribute work to the QC Chemists and Laboratory Technicians, monitor their work in an effort to catch errors, and answer their questions about the tests the Chemists and Technicians are assigned to perform. The QC Group Leaders attempt to distribute work assignments to equalize the employees' workload, and they generally give more difficult assignments to the more experienced employees. The Group Leaders also administer the Employer's testing programs, labeling samples when they are received from Quality Assurance and keeping track of when samples must be tested.

Group Leaders spend considerable time performing the same tests done by the other QC employees. Specifically, according to Human Resources Director Weaver, one of the Group Leaders spends the majority of her time personally performing laboratory tests, and the other Group Leaders spend about half of their time performing laboratory work.

According to Weaver, the Group Leaders have no authority to hire, fire, or discipline other employees. Group Leaders are often asked to interview applicants for employment and make recommendations, but Weaver testified that Director of Analytical Services Maderich makes these hiring decisions and the Group Leaders' recommendations are only one of the factors considered. QC Chemists Kevin Murphy and Ace Keveney testified however, that their employment interviews were conducted by Group Leaders, and Keveney testified that a Group Leader later told him that he personally made the decision to hire him. Chemists themselves may participate in interviews for other Chemists.

¹² The R & D Department also has two Group Leaders, and the Employer contends that they should be included in the unit due to their community of interest with the R & D Chemists. Since R & D Chemists are excluded as professional employees, the R & D Group Leaders need not be included.

The Laboratory Assistant in the R & D laboratory primarily cleans glassware.

The Employer has a progressive discipline system, which proceeds from verbal warning to written warning, suspension, and termination of employment. Weaver testified that Group Leaders may tell employees that their performance is deficient but they may not issue formal verbal or written warnings without the approval of QC Supervisor Morris-Moore. QC Chemist Murphy testified that Group Leader Kristie Stephens once handed him a written warning for using the wrong size flask in a test. According to Murphy, Stephens gave him the warning as soon as she noticed that he used improper equipment and she did not consult higher-level supervision. Murphy's verbal warning has not led to any further discipline. Keveney reported two occasions in which Group Leaders handed him warnings for attendance-related matters.¹³ He did not indicate whether the Group Leaders conferred with superiors before these actions.

The Employer evaluates employees annually on a standardized form and gives each employee a numerical grade, which determines the amount of their wage increases. In 2003, for instance, employees scoring above 85 will receive a 4.4 percent increase; employees scoring between 75 and 84 receive a 2.2 percent increase; and employees scoring below 75 receive no increase. According to Weaver, the Employer's supervisors are responsible for conducting the annual evaluations, although typically they seek input from Group Leaders. The QC Group Leaders complete evaluation forms for the employees in their areas and submit them to Morris-Moore, who changes the scores on approximately 10 percent of the evaluations. Morris-Moore then uses the modified evaluations to compute employee wage increases and signs the forms. Both Keveney and Murphy testified that Group Leaders completed their entire recent performance appraisals themselves and conducted meetings with them to review the appraisals. Morris-Moore also attends the appraisal meetings.

Weaver also testified that Morris-Moore can recommend employees for a merit increase or promotion from one classification to another – i.e., Chemist I to Chemist II or Chemist II to Senior Chemist, but she did not indicate what, if any, role the Group Leaders play in merit increases or promotions. According to Murphy and Keveney, Group Leaders told them that they had recommended and secured their promotions from the Chemist I to the Chemist II classification. The Group Leaders can recommend to Morris-Moore that an employee be given compensatory time off for exceptional performance.

Murphy and Keveney testified that they submit requests for vacation or other time off to their Group Leaders who indicate whether the requests will be granted. Murphy has never had a request denied. Keveney stated that a Group Leader once denied him a requested day off, but the denial took place while he was employed in R & D rather than Quality Control. Murphy indicated that his Group Leader has asked him to work overtime on four or five occasions over the course of his two-plus years of employment.

Group Leaders assist in training employees to use the Employer's equipment and testing methodology, among other things. Experienced Chemists may also help train newer Chemists.

The Group Leaders are exempt employees and receive the same benefits as the other QC employees. They are paid slightly more. Thus, the highest paid QC Chemist receives an annual

¹³ One of the warnings was for coming to work late; the other was for failing to call in to the right person when he was out sick.

salary of about \$55,000, while the lowest annual salary of the three QC Group Leaders is approximately \$60,000.

Analysis and Conclusion

The Petitioner contends that the QC Group Leaders exercise independent judgment in assigning work, disciplining, promoting, and rewarding other employees. I find that the Petitioner has not carried its burden of proof on these issues.

Proof of independent judgment in the assignment of work requires concrete evidence showing how assignment decisions are made. *Franklin Hospital Medical Center*, 337 NLRB 826, 830 (2002). Assignments made to equalize employee workloads or based on well known differences in employee skills are regarded as routine and not involving exercise of independent judgment. *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426, 427 fn. 7 (1998); *Providence Hospital*, 320 NLRB 717, 727 (1996). Weaver testified that Group Leaders make assignments with an eye toward equalizing workload while taking into account employee experience levels. The record does not clearly indicate whether employee experience levels are well known or whether the Group Leaders exercise discretion in deciding who can handle a particular job. However, since most of the work in the QC Department is routine, it is more likely that Group Leaders do not need to exercise much discretion when making assignments. In any event, the Petitioner has not met its burden to provide concrete evidence showing how assignment decisions are made, and I therefore find that the Petitioner has not shown that the Group Leaders exercise independent judgment in allocating work.

In addition to the role the Group Leaders play in distributing work, they are involved to some extent in the approval of time off and the assignment of overtime. Chemists Keveney and Murphy testified that they submit requests for time off to the Group Leaders and that the Group Leaders tell them whether the requests are granted. This testimony does not, however, preclude the possibility that the Group Leaders confer with superiors before responding to the Chemists' time off requests. Similarly, the fact that a Group Leader has asked Murphy to work overtime on occasion does not mean that the Group Leader personally decided that the overtime was needed. I therefore find that the Petitioner has not met its burden of demonstrating that the Group Leaders decide when time off will be granted or overtime required. See *Williamette Industries, Inc.*, *supra*.¹⁴

The Petitioner also has failed to meet its burden to demonstrate that the Group Leaders have the authority to discipline other employees. The Employer has a progressive discipline policy, and a warning administered by a Group Leader might ultimately impact an employee's job tenure. While Chemist Keveney testified that Group Leaders handed him two written warnings, there is no evidence regarding the sequence of events leading to the warnings, and it is possible that higher-level supervisors decided to issue them. Chemist Murphy testified that a Group Leader gave him a warning under circumstances that made consultation with higher authority unlikely, but this single instance of the imposition of low-level discipline merely demonstrates a sporadic exercise of authority insufficient to establish supervisory status.

¹⁴ In that case, the Board stated that, "Any lack of evidence in the record is construed against the party asserting supervisory status."

Training School at Vineland, 332 NLRB 1412, 1416 (2000); *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 (1993). Weaver testified that Group Leaders may issue written warnings with the approval of the QC Supervisor, but she did not indicate whether supervisory approval was perfunctory or followed an independent investigation. Absent evidence that approval is almost always automatically given, the Petitioner has not shown that the Group Leaders exercise independent judgment in issuing warnings.

Finally, the Petitioner asserts that Group Leaders have the authority to reward other employees through their participation in the Employer's evaluation system because the Group Leaders prepare evaluation forms for employees, and the evaluations, after review and possible alteration by the QC Supervisor, lead directly to wage increases. The Board has indicated that the ability to evaluate other employees will establish supervisory status where there is a direct connection between the evaluation and some personnel action. *Williamette Industries, Inc.*, supra. Where evaluations are reviewed by higher authority and sometimes changed unilaterally, however, the Board has declined to find a direct connection between the original evaluator and any subsequent personnel action and has refused to regard the evaluator as a supervisor. *Ten Broeck Commons*, 320 NLRB 806, 813, fn. 12 (1996). As the QC Supervisor makes changes in about 10 percent of the evaluation forms submitted by the QC Group Leaders, there is no direct connection between the evaluation forms completed by the Group Leaders and the wage increases ultimately received by employees. I therefore find that the Group Leaders' participation in the evaluation process is not sufficient to make them supervisors. Weaver also testified that Group Leaders may reward employees with compensatory days off provided they secure approval from the QC Supervisor. Absent evidence that approval is routinely granted, this testimony does not demonstrate that the Group Leaders are supervisors.

In sum, the Petitioner has not shown that the QC Group Leaders use independent judgment in exercising any of the supervisory powers set forth in the Act. They work alongside the other QC employees who have already been included in the unit and plainly share a community of interest with those employees. I shall therefore include the three QC Group Leaders in the unit.

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer has submitted a Motion to Correct Errors in the official transcript of the hearing. The Petitioner has not opposed the Motion, and it is granted.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time production, maintenance, Quality Control, Quality Assurance and Validation employees employed by the Employer at its Philadelphia, Pennsylvania facilities, including Buyers, Janitors, Laboratory Assistants, Laboratory Technicians, Lead Handlers, Maintenance employees, Maintenance Mechanics, Manufacturing Custodians, Manufacturing Group Leaders, Manufacturing Technicians (I, II, and III), Materials Handlers, Packers (I and II), Packer/Operators, Product Development Technicians, Manufacturing Assistants, Purchasing Agents, Purchasing Agents/Inventory Analysts, Schedulers, Shipping and Receiving Clerks, Validation Specialists, Validation Technicians, Packaging Line Leaders, Quality Assurance Inspectors, Quality Control Chemists (I and II), Quality Control Senior Chemists, and Quality Control Group leaders; excluding all other employees, auditors, auditor/reviewers, Research and Development Chemists, Research and Development Senior Chemists, Research and Development Senior Scientists, Research and Development Group Leaders, Senior Formulators, Administrative Department employees, Customer Service Department employees, Executive Department employees, Regulatory Affairs Department employees, clerical employees, guards, and supervisors as defined in the Act.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Teamsters Union Local No. 115 a/w International Brotherhood Of Teamsters, AFL-CIO**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also

eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **January 7, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **January 14, 2004**.

Signed: December 31, 2003

at Philadelphia, PA

/s/

DANIEL E. HALEVY

Acting Regional Director, Region Four

Classification Index Numbers

177-8520

177-9325

420-5027

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